IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

COMPANY PETITION No.884/2003.

M/s. Bell Marshal Tele
System Ltd. ..Petitioner.

V/s.

M/s. Sun Tel India Ltd. ..Respondent.

Mr Atul Damle i/b J. P. Dube for the Petitioner.

None for the Respondent.

CORAM: V.C. DAGA,J.

DATED: 28th FEBRUARY,2007.

P.C.:-

1. Heard the learned counsel for the petitioner. None for the respondent.

2. Perused petition.

3. Petitioner has invoked jurisdiction of this Court under Sections 433 and 434 of the Companies Act, 1956 to seek winding up of "M/s.Suntel India Ltd." (hereinafter referred to as "company").

4. The present company petition is filed for recovery of a sum of Rs. 10,96,000/-liability of which was acknowledged by the respondent company on 19.5.2001 in reply

to the letter of petitioner company dated 14.5.2001 where under balance confirmation was sought by the petitioner.

5. Inspite of the aforesaid acknowledgment of debt, no payment was made by the company to the petitioner. No material is available on record to infer any payment against the acknowledged liability.

6. Since there was no payment made by the company, the petitioner was required to issue statutory notice dated 2nd July, 2002 which was received by the company. Inspite of receipt of the statutory notice under Section 434 of the Companies Act, 1956, neither any reply to the said notice was sent nor any payment was made.

7. Consequently, petitioner was required to invoke jurisdiction of this Court to seek winding up of the company as stated herein above.

8. After admission of this petition, notice was again issued to the respondent company. The same was served on the respondent. The appearance of M/s.Bhandary & Bhandary Advocates on behalf of the company is

on record. However, no reply is filed to answer the petition. Under these circumstances, there is no dispute with regard to the debt due and recoverable from the respondent company.

9. In the above view of the matter, the company has failed to discharge it's liability shown in the winding up petition. In other words, assertion made in the petition which are supported by the documents placed on record have remained uncontroverted. In that sense the legal presumption that arises against the respondent company that it is unable to pay it's debt has remained unrebutted. The petitioner has made out a case to invoke the jurisdiction under Section 434 (1) (a) of the Companies Act, 1956. Under these circumstances, the respondent company is liable to be wound up.

10. In the result, the petition is made absolute in terms of prayer clause (a) and (b) with no order as to costs.

[V.C.DAGA,J]